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CERTIFICATE OF DIVISION IN OPINION.

SUPREME COURT OF THE UNITED STATES.

No. ~~502~~ 2677 6

THE BALTIMORE AND OHIO RAILROAD COMPANY,
PLAINTIFFS,

vs.

THE BOARD OF SUPERVISORS OF MARSHALL COUNTY.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 7, 1869.

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1 Be it remembered that heretofore, to wit, on the 10th day of July, A. D. 1869, came the Baltimore and Ohio Railroad Company, by George H. Lee, its attorney, and filed—before the Hon. John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, and, as such, associate judge of the circuit court of the United States for the district of West Virginia, at chambers, in the city of Parkersburg, in the district aforesaid—its bill against the board of supervisors of Marshall County; Henry Keltz, sheriff of said county of Marshall; and Jackson Reed, late sheriff of said county of Marshall (the said defendants being citizens and residents in said district), praying an allowance of an injunction for the matters and things in said bill recited and charged; which said bill, and the order of injunction thereon, is in the words and figures following:

2 In the circuit court of the United States for the district of West Virginia, at Parkersburg.

BALTIMORE AND OHIO RAILROAD COMPANY
vs.
SUPERVISORS OF MARSHALL COUNTY ET AL.

Bill.

To the Honorable John J. Jackson, jr., judge of the circuit court of the United States for the district of West Virginia:

Humbly complaining, sheweth unto your honor, the Baltimore and Ohio Railroad Company, that this complainant is a corporation chartered by the general assembly of the State of Maryland, having its principal place of business at Baltimore, in said State, and that its organization is prescribed and regulated exclusively by the laws of that State; that its president and directors are citizens and residents of the same State; and the defendants hereinafter named are citizens of the State of West Virginia, and municipal corporations and organizations in and of the last-named State, erected by virtue of the constitution and laws thereof.

That this complainant was first incorporated by an act of the general assembly of the State of Maryland, passed on the twenty-eighth day of February, in the year one thousand eight hundred and twenty-seven, entitled "An act to incorporate the Baltimore and Ohio Railroad Company," and which is fully and correctly set forth in the act of the general assembly of the State of Virginia, passed on the eighth day of March, in the year one thousand eight hundred and twenty-seven,

3 entitled "An act to confirm an act passed at the present session of the general assembly of Maryland, entitled 'an act to incorporate the Baltimore and Ohio Railroad Company.'"

That by subsequent acts of the general assembly of Maryland, which have not been confirmed by the general assembly of Virginia, or the legislature of West Virginia, the original organization of this complainant has been to a certain extent modified; among which acts is one passed on the 15th day of March, 1828, whereby the governor of the State of Maryland was authorized to appoint two directors of said company, and passed on the 15th day of February, 1836, whereby the mayor and council of Balti ore were authorized to appoint a certain number of additional directors, and one passed on the 4th day of June, 1836, whereby the State of Maryland became entitled to appoint a certain number of additional directors, which acts duly took effect. But that

no act of the general assembly of Maryland has been passed whereby the exemption from taxation first hereinafter mentioned, has been modified or repealed.

That by the said act of the general assembly of Maryland, passed on the 28th day of February, 1827, it was enacted in the eighteenth section, "that the shares of the capital stock of the said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the States assenting to this law."

That this complainant is advised and insists that the effect of this clause was to exempt all the property of this complainant from taxation of every kind, whether general or local, whether imposed by the legislature of the State directly or by a county, city, or other body or authority of local jurisdiction, and that such has been the judicial construction of the said clause.

That by the said act of the general assembly of Virginia, passed March 8, 1827, it was enacted that the same rights and privileges should be, and were thereby, granted to this complainant within the territory of Virginia as were granted to them within the territory of Maryland by the said act of the 28th of February, 1827, the provisions of which were therein recited at length; and that this complainant should be subject to the same pains, penalties, and obligations as were imposed by the act so recited, and the same rights, privileges, and immunities which were reserved to the State of Maryland, or to the citizens thereof, are thereby reserved to the State of Virginia and her citizens; except, however, that this complainant was forbidden to make lateral roads in Virginia without the consent of the legislature thereof, or to terminate its road proposed to be constructed, on the Ohio River below a certain
4 point designated, and was made subject to certain restrictions and regulations as to the condemnation of property in Virginia, and injuries to this complainant's property in Virginia, its road, other works or necessary buildings, should be preserved according to the laws which might be in force in that State.

That this complainant having been duly organized under the said first-mentioned act of the State of Maryland, duly accepted the said act of the general assembly of Virginia.

That this complainant commenced the construction of its said road within the time required by those acts, but was unable to complete it within the time thereby prescribed; but that neither for that cause nor for any other has any act been passed or done, or any proceeding taken by the government, legislature, courts, or other authorities of either of said States, or of the State of West Virginia, to enforce a forfeiture of the charter of this complainant, or of any of the franchises, rights, or privileges granted to it as aforesaid, in either of said States, or to repeal, annul, or impair, or in any respect to modify the same, except as hereinafter particularly mentioned; that, on the contrary thereof, laws have been enacted, both by the general assembly of Maryland, and by that of Virginia, extending the time for the completion of the said road.

That this complainant is advised and insists that the rights, privileges, and immunities granted to this complainant by the said act of the general assembly of Virginia, passed March 8, 1827, and especially the exemption from taxation thereby guaranteed, yet remain in full force, except so far as the same have been modified by an act of the legislature, accepted by this complainant, as hereinafter mentioned.

That by an act of the general assembly of Virginia, passed on the sixth day of March, in the year one thousand eight hundred and forty-seven, entitled "An act to authorize the Baltimore and Ohio Railroad

Company to construct the extension of their railroad through the territory of Virginia," this complainant was authorized to complete its railroad through the territory of that State, in the manner and within the time therein prescribed. By the sixth section of that act it was provided that this complainant should be subject to the provisions of the act of assembly, passed on the 11th of March, 1837, establishing general regulations for the incorporation of railroad companies, with respect to that portion of its road or other improvements then or thereafter constructed within that commonwealth, so far as the same were properly applicable.

That by the seventh section of the same act of March 6, 1847, it was provided and enacted as follows: "That the stock, property, and profits of the said company, so far as the same may be or accrue within this commonwealth, shall be subject to general taxation in like manner and on the same footing with other similar companies in this State: Provided, however, that said taxing power shall not be exercised until and unless the nett income of the said Baltimore and Ohio Railroad shall exceed six per centum per annum upon their capital invested."

That this complainant duly accepted the said last-mentioned act, and completed its road through the territory of Virginia, within the time and in the manner herein prescribed.

That in the general railroad law of 1837, to which that act made this complainant subject as aforesaid, there is no provision on the subject of taxation, but by the twenty-third section thereof, it is enacted that "all machines, wagons, vehicles, or carriages belonging to any company incorporated subject to the provision of this act, together with all their works and all profits which shall accrue from the same, shall be vested in the respective shareholders forever, in proportion to their respective shares, and shall be deemed personal estate."

That this complainant is advised and insists that the acts so passed by the general assembly of Virginia and accepted by the complainant as aforesaid, constituted, and are, contracts between that State and this complainant, and that any law of that State or of the State of West Virginia, or any authority attempted to be exercised under either, upon any construction of any law of either of said States, which impairs the obligation of such contracts, or of any or either of them, or which violates or contravenes the same, is void and of no effect, by reason of the first clause of the tenth section of the first article of the Constitution of the United States, which declares, among things, that no State shall pass any law impairing the obligation of contracts.

That according to the true construction of said laws and contracts, as this complainant is advised, all the capital, stock, and property of this complainant was to be always exempt from all taxes and burthens, except that the State of Virginia might for any year in which said nett profits accruing within that State, should exceed six per centum on the capital invested in Virginia, impose a general tax upon the stock, property, and profits of this complainant, so far as the same might be or accrue within that State, such general tax being made applicable to this complainant in like manner, and on the same footing with other similar companies within the State of Virginia. In other words, that this complainant's stock, and all its property, was to be and remain always exempt from levies for county purposes, taxation by towns or townships, and all other local taxes and burdens whatever; and general taxation was to be imposed by the State for State purposes, only under certain circumstances, upon certain stock, property, and profits, and in the manner prescribed.

6 That this complainant is advised that the clause declaring that the taxation of this complainant's stock, &c., should be in like manner and on the same footing with other similar companies in Virginia, is wholly inconsistent with the idea of liability to local levies, and was intended to be a valuable security to this complainant as a corporation of another State against unjust taxation, since there were at that time divers railroads in Virginia, owned almost exclusively by that State and her cities, counties, and citizens, and it was highly improbable that they would ever be subjected to unjust taxation.

That, in fact, when the said act of March 6, 1827, was passed, the railroad companies in Virginia, not exempt from taxation, were taxed only in proportion to their dividends declared, as will appear by reference to the act of the general assembly, passed March 28, 1843, entitled "An act prescribing the mode of ascertaining certain subjects of taxation, and the rate of taxation imposed by the laws in force when said act of March 6, 1847, was passed, was one and one-half per centum on such dividends, as may appear by reference to the act of the same general assembly, passed February 28, 1846, entitled "An act imposing taxes for the support of government." And that under the provisions of subsequent laws of the State of Virginia, and still in force therein, such companies were to be taxed only in proportion to the number of passengers and the receipts from freight transported in that State, being one mill per mile for each passenger transported, and one-half of one per centum of such receipts from freight, payable into the State treasury, in lieu of all taxes on all property which the company might have, as will appear by reference to the code of Virginia, chapter 35, sections 58 and 59; which said provisions were in force from and after the passage of the act of that State, of the 30th of March, 1860, entitled "An act for the assessment of taxes on persons and property," as from the said act, reference being had thereto, will manifestly appear. But all the road and works of this complainant which were constructed, and all its property which was situated in the said State of Virginia, were and are in that part of the State which is now the State of West Virginia, and are the same works and property on which, together with the rolling stock alledged to pass over such works, taxes and levies have been assessed in the latter State as hereinafter set forth.

That the State of West Virginia has claimed authority since the 20th of June, 1863, as a State of the Union, to impose taxes and to authorize the imposition of local levies and charges on properties within her boundaries, including the property of this complainant, as hereinafter more particularly stated. But the road of this complainant, in-

7 cluding the Northwestern Virginia Railroad, now the "Parkersburg Branch Railroad" (having been purchased by this complainant at a public sale thereof, made to satisfy a large debt due this complainant, and conveyed to it by the name last mentioned), is the only railroad in West Virginia, except about fifteen miles of the road known as "the Hempfield railroad," and some six or eight miles of the road known as "the Pittsburgh and Steubenville railroad," so that if this complainant, or the property held in its name, is subject to taxation by the State of West Virginia, this complainant is wholly deprived of the guaranty against unjust taxation which was, and was intended to be, secured to it by the clause in the said act of the 6th of March, 1847, subjecting the stock, &c., held in the named complainant, to general taxation only, in like manner and on the same footing with other similar corporations within the State of Virginia. Such, at least, must be the consequence, unless the taxation in West Virginia be confined to

stock held by persons in that State. And this complainant is advised that any other taxation imposed by or under the authority of the State of West Virginia, is and must be in violation of said last-mentioned clause of the said act of the 6th of March, 1847, and of the contract which it imports, and consequently that any law imposing or authorizing the same is void and of no effect, as being in conflict with the clause of the Constitution of the United States above referred to.

That this complainant is further advised that at any time the stock, property, or profits held in the name of this complainant, being or accruing in the State of West Virginia, were or are subject to general taxation as aforesaid, yet, inasmuch as the act of March 6, 1847, which alone would make them subject thereto, does also, by adopting and applying to this complainant the said section of the general railroad law of 1837, declare that all such property and profits shall be vested in the respective shareholders in proportion to their respective shares; and shall be deemed personal estate, such taxes must be imposed, assessed, and collected on and from shareholders residing in West Virginia, and not on or from this complainant as a corporate body. Or, if such be not the true construction of said laws and contracts, and if the property held in the name of this complainant be at any time subject to general taxation in that State, yet it must be only real estate or fixed property, permanently situated there, and not rolling stock or other personal property which has, in contemplation of law, no situs but that of the place of this complainant's incorporation (the State of Maryland), unless otherwise declared by express enactment, and none such is to be found in the said act of the 6th of March, 1847.

8 That if the stock, property, or profits held in the name of this complainant are in any manner liable to taxation in West Virginia, yet it is only (as this complainant is advised) when the net profits accruing from the working and operations of the said road within that State, shall exceed the rate of 6 per centum per annum on the capital invested in that State. This complainant had, invested in that State, before the 1st day of February, 1864, many millions of dollars, including about six millions invested in the said Parkersburg Branch railroad, pursuant to law, and not including the cost of rolling stock used in that State, as well as on that part of complainant's said road which is in the State of Maryland. Including an estimate for the last-named stem in proportion to its ordinary use in West Virginia, said investments in that State would amount to not less than twenty-one millions of dollars, and this amount has been since that date greatly increased. Whether during the years from 1864 to 1868, both inclusive, net profits exceeding the rate of six per centum per annum upon said sum have accrued or been received, or made by this complainant from that part of its road, works, and property within the State of West Virginia, has not yet been ascertained and cannot be ascertained without the most tedious and minute examinations, most laborious comparisons, most intricate and particular calculations. Whenever the same shall be ascertained, this complainant reserves the right to ablege the same, with leave of the court, by way of amendment to this bill, if it be material. But so far as an estimate can be made upon the returns and other data now in the possession of this complainant without such examinations, comparisons, and calculations, which it will be the work of much time and labor to make, this complainant charges the fact to be upon such estimate as aforesaid, that the nett income accrued from the said road within the State of West Virginia, did not exceed the amount of six per centum upon the capital so invested as aforesaid, neither of the years during the period aforesaid.

That if the fact aforesaid be material, yet this complainant is further advised that upon the true construction of the act of March 6, 1847, the taxing power therein and thereby acquired was reserved to be exercised by the legislature, by some future and specific act, and was not intended to be exercised until the legislature had, by some proper proceeding or in some appropriate form, ascertained and declared that the profits of this complainant had reached the point at which its stock, &c., would be subject to taxation, or that such stock, &c., had become subject to taxation, so that said company, being this complainant, should be assessed with such taxes as it might be liable to pay, and required to pay the same in like manner and on the same footing as provided in the
9 act last aforesaid, or had passed some act or adopted some resolution to the same effect, that it was not intended by said act that a mere local revenue officer or assessor of taxes in any county, assess in any district through which the road happened to pass, should, at his pleasure or discretion, or on his mere authority, undertake to decide the grave question when this company had become liable to taxation under the provisions of the said act of March 6, 1847, the terms of which imported that the said company had not become so liable in respect of the rate of its nett profits fixed by that act up to that date, and without further warrant from the legislature, proceed to assess the property of this complainant on his books, and thus subject this complainant to distraint and sale of the property held in its name, whether it was bound under the law to pay taxes or otherwise, both for general State charges, and local, county, and township levies.

That no such proceeding has ever been had, nor has any legislative act or resolution been passed, either by the general assembly of Virginia or by the legislature of West Virginia, declaring that this complainant was subject to taxation, nor has the taxing power, acquired and secured, by the seventh section of the act of March 6, 1847, ever been exercised by either of said bodies, in the only mode in which, under the terms of said act, it could be exercised, to wit, by some specific legislative enactment or declaration as aforesaid. On the contrary, in the act of the legislature of West Virginia, hereafter to be cited, providing for the assessment of railroad companies, it is expressly declared "that the property exempt from taxation by the charter of any such company shall not be assessed;" and this could apply to no charter but that of this complainant, because there was then and is now no other railroad company having property in West Virginia, as this complainant believes and charge, which had or has by its charter any kind of exemption from taxation in that State. Thus, if this clause has the effect of forbidding this complainant's property to be assessed, then the assessment and levies hereinafter mentioned are illegal; but if the act in which this clause is found, required this complainant's property to be assessed as claimed by the defendants hereinafter named, as hereinafter stated, the act, as this complainant is advised, is in conflict with said laws and contracts, and is so far in contravention of the Constitution of the United States, and therefore void and of no effect.

This complainant further sheweth that by an act of the legislature of West Virginia, entitled "An act imposing taxes," passed February 29, 1864, it was enacted that the taxes on subjects required by law to be listed or assessed, should be yearly as follows: On tracts of land
10 as a lot with the improvements thereon, not exempted from taxation, thirty cents on every hundred dollars value thereof; on all the personal property, money, and credits required by law to be listed and not exempt from taxation, thirty cents on every hundred dollars

value thereof, and that there should be also levied yearly on the assessed value of real and personal property ten cents on every hundred dollars, for the purposes of free schools; that the foregoing continued to be the rate of taxation until the passage of the act entitled "An act to reduce taxes," passed March 5, 1868, by which the rate of taxation aforesaid, on such real and personal estate, was reduced to twenty cents on the hundred dollars of value thereof, and this last is the act now in force upon this subject. This complainant presumes that these are the only acts which are supposed to impose the State taxes hereinafter mentioned, and whilst they plainly exclude property exempt from taxation, their enumeration of "tracts of land and lots with the improvements" as subjects of the tax imposed, is not appropriate, as this complainant is advised, to include the road and works of this complainant, which are by law declared to be personal estate and to belong to the shareholders in proportion to their respective shares. But if these acts are to be construed to impose a tax on the property of this complainant, or any of it, as now claimed by the defendants hereinafter named, this complainant is advised and insists, and submits to your honor, that the said acts are so far void and of no effect.

This complainant further sheweth that since the third day of December, 1863, the assessment and listing of property, and other subjects of taxation in West Virginia, have been regulated by the act entitled "An act to provide for the assessment of taxes," passed on the day last named. By this act it is provided that in every county there should be elected one or more assessors, and in Marshall County two, each having a separate district; that each assessor, after making assessments as therein directed, should make out a land book, and a personal property book, and certain copies thereof, for the purposes of State taxation, and it was provided (§ 86) that such copies shall also serve for laying the county levy. Township levies are also required (as your orator is advised) by the laws of the State to be laid according to the same books. There is no mode provided by the laws of the State (as this complainant is advised) for correcting the assessments in such a manner that, if this complainant be held to be subject to State taxes, and not to county levies or other local burdens, the assessments might stand for the former purpose, and not require the imposition of the latter levies and burdens.

That by the 52d and 53d sections of the same act of December 3,
11 1863, it is provided that "the president, secretary, or principal accounting officer of every railroad company, whether deriving its corporate power exclusively from this State or not, shall list for taxation, at its true value in money, verified by the oath or affirmation of the officer so listing, all the property, money, and credits of such company, of whatsoever kind, wholly held or used in this State, and also the proportional value of all locomotives and rolling stock passing in and out of this State, on railroads crossing the lines thereof, to be ascertained by the proportion which the number of miles run within this State by such locomotives and other rolling stock, may bear to the whole number of miles run by such locomotives and other rolling stock over the road belonging to such company, or any connecting line; the proportional value of all such locomotives and other rolling stock so ascertained to be assessed as the property of the company owning and using the same, whether it be run upon its own or any other railroad within this State. The property exempt from taxation by the charter of any such company shall not be assessed. The proportional value of all locomotives and other rolling stock, and the value of all other personal and movable property, money, and credits shall be added to the stationary and fixed prop-

erty and real estate, and shall be apportioned by such officer to each county through which the road passes pro rata, in proportion to the fixed property and real estate belonging to the company in such county, and all property so listed shall be subject to and pay the same taxes as other property listed in said county. Such officer shall, on or before the 1st day of April, in each year, make out and return such pro rata valuation of the real and personal property, and money and credits of such company in the several counties through which such railroad passes, verified as aforesaid, to one of the assessors of each of said counties respectively. If said assessor is of opinion that false or incorrect valuations have been returned, he shall proceed to assess the value of all such property according to the best information he may be able to obtain in the manner prescribed in section 69 of this act.

§ 53. Whenever, in any one year, the president, secretary, or principal accounting officer of any railroad company shall fail to make the return required by the preceding section, in the manner and by the time therein required, it shall be the duty of the respective assessors of the several counties through which said railroad passes, to proceed to ascertain the valuation of the property of said company mentioned in the preceding section, and in the manner therein prescribed. But this complainant is advised, and submits to your honor, that the mode of assessing the property of railroad companies thus prescribed, and the imposition
12 of State or local taxes in accordance therewith, are in conflict with the said acts of the general assembly of Virginia, and the contracts with this complainant, which they constituted when accepted, as they were, on its part, and are void and of no effect because they are in plain contravention of the clause in the Constitution of the United States, above referred to. They operate, moreover, especially as to local levies, unjustly, unequally, and oppressively.

This complainant, considering that all its property in West Virginia was exempt from taxation, did not, in either of the years above mentioned, make any list, valuation, or return of its moneys, property, or credits; and the assessor of said county of Marshall, in that State (through which this complainant's railroad passes), did proceed in some way to ascertain the value of this complainant's property in said county, and have assessed taxes thereon against this complainant in each and every of those years, for State purposes, as follows, to wit:

For the year 1865, twelve hundred and sixty dollars.

For the year 1866, twelve hundred and sixty dollars.

For the year 1867, twelve hundred and sixty dollars.

Being at the rate of thirty cents on every hundred dollars of the valuation thereof for State taxes, and ten cents for free schools.

And for the year 1868, nine hundred and forty-five dollars, being at the rate of twenty cents on every hundred dollars of the valuation thereof for State taxes, and ten cents on the same for free schools.

Moreover, on the same assessed valuations for said several years, the board of supervisors of said county of Marshall have levied, in said several years, county taxes as follows:

For the year 1865, thirteen thousand eight hundred and sixty dollars.

For the year 1866, four thousand two hundred dollars.

For the year 1867, four thousand two hundred dollars.

For the year 1868, one thousand eight hundred and ninety dollars.

And certain townships in said county through which said complainant's road passes (said townships being a species of municipal corporations, under the constitution and laws of West Virginia, with authority to sue and be sued, and power to levy taxes for township purposes on

property within their limits not exempt by law from taxation), have also, as this complainant has been informed, levied on the same valuations for the years aforesaid, or some of them, certain township taxes, to amounts and for purposes unknown to this complainant, and are claiming the same to be due of this complainant and now justly demandable of it.

13 This complainant is not informed and cannot state in what manner said assessors made their said valuation and assessment of said property for the years above specified, but suppose that they were, in part, of the real estate and fixed property held in the name of this complainant, and of rolling stock for the residue, according to the rule of proportion prescribed in the said act of 1863 above referred to, and which was the law in force upon this subject at the time when all of said assessments and valuations were made as aforesaid.

This complainant, according to the laws of West Virginia, caused, through its agents, an application to be made to the board of supervisors of said county of Marshall, to correct the books of assessment for said county, by striking therefrom the assessment made against this complainant, upon the ground that the property held in its name was, under the law, exempt from taxation; but the said board either declined to consider the said application, or, if it was considered, declined to accede to the same. Complainant is not able to state the prescise mode in which the matter was disposed of, but was informed that the said application was rejected.

This complainant is advised and insists that said taxes and county and township levies for the said several years above specified, are all and each of them illegal and unconstitutional, so far as the property held in the name of this complainant is concerned, and this complainant is not bound by law to pay the same, or any of them. Moreover, as to said county taxes, this complainant is informed and believes it to be true, and accordingly charges, that the same include, in some of said years, certain sums to this complainant unknown, for what was known as "bounty taxes," which were not levied for county purposes in the sense of the law, and were not such "county levies" as, according to the constitution of West Virginia, a board of supervisors of any county "can lay, collect, or disburse," nor could the legislature delegate any such power to such a board. This complainant charges that these levies were laid for the purpose of raising money to pay or refund certain sums which were voted by said board of supervisors of Marshall County to induce persons to volunteer as soldiers in the military service of the United States, an object sovereign in its nature, and of the most general character, and wholly different from the local purposes for which such boards are or can be authorized to impose county levies. And this complainant charges that these taxes were more than county and township levies generally; if enforced against this complainant by county authorities, instead of being laid by the legislature on all the property of the State alike, operate most onerously, unequally, and unjustly. In some of the counties through which complainant's road passes

14 (and in which the assessment of complainant's property is made very high by adding to the valuation of its real estate, which happens to be large in those counties, and undue proportion of the value of its rolling stock, according to the unjust and oppressive provisions of the said act of December 3, 1863), such taxes have been laid at unnecessary and extravagant rates, whilst in other counties in the State no such taxes have been laid, or they are comparatively light. And this complainant submits that such inequalities illustrate the propriety of that

construction of the act of March 6, 1847, which it is advised and insists is the true construction, to wit, that the only taxation to which the stock, &c., of this complainant was to be subject, in any event, or in any form, was general or State taxation, imposed by the legislature when it decided to exercise the power which, under the said act of 1847, was secured to it upon the acceptance of the provisions of that act by this complainant, to the exclusion of county levies and all other local burthens.

This complainant further sheweth that the said contracts, on which it relies for exemption from taxation, were founded on a very valuable consideration proceeding from this complainant, and which the State of West Virginia now abundantly enjoys. Upon the faith of said contracts this complainant constructed some four hundred miles of railroad (including the Parkersburg Branch), or thereabouts, now wholly in that State, and, in constructing the same, by reason of the obligation of said laws and contracts, not only adopted routes less advantageous to this complainant than others which it preferred, but necessarily expended several millions of dollars more than would have been required, according to the plan of reaching the Ohio River which would have been most acceptable to this complainant; which additional expenditures were required only for the interests and advantage of the State itself (which contributed nothing to the expense of constructing said roads) and the citizens thereof.

This complainant further sheweth unto your honor that, prior to the assessments hereinbefore complained of, for the years above specified, to wit, in the year 1864, the assessors of said county of Marshall had undertaken to assess a large amount of taxes as due to the State from this complainant for State purposes and free schools, and the supervisors had laid a heavy levy upon all property so assessed, including that held in the name of this complainant, for county purposes in part, and in part for payment of bounties to volunteers, of the character above specified; and the sheriff of the county having proceeded to make demand of this complainant for payment of such taxes and bounty and county levies, and threatening to levy upon and sell property held by this
15 complainant to raise the amount, this complainant applied for and obtained from the judge of the circuit court of said county of Marshall an injunction to stay the collection of said taxes and levies for the year 1864, upon a bill praying the same exhibited to the said judge, and stating grounds for such interference; all of which are embraced in those hereinbefore stated, and on which the action of your honor will be invoked, as will appear in the sequel. This bill was duly filed, and the defendants therein named, the supervisors of the county of Marshall, and Jackson Reed, the then sheriff of said county, afterwards filed their joint and several answer to the same, and such proceedings were then had in the cause that, at the final hearing thereof, on the 9th day of April, 1867, a decree was pronounced by which the injunction that had been allowed, as aforesaid, was dissolved, and this complainant's bill dismissed with costs. From this decree this complainant obtained an appeal to the supreme court of appeals of the State of West Virginia, as provided by law, and on such appeal such proceedings were had that, on the 26th day of January, in the year 1869, the said court of appeals pronounced its decree affirming that of the said circuit court of Marshall county, with damages and costs. Complainant herewith exhibits a copy of the record of said cause (printed under authority of law, for the use of said court of appeals), and prays that the same may be taken and received as part thereof. Immediately after the rendition of said decree

in said supreme court of appeals, this complainant applied, by petition, to the Honorable S. P. Chase, Chief Justice of the United States, for a writ of error to the said decree. Said writ of error was accordingly granted, by order of said Chief Justice, on terms of giving bond as prescribed by law. Such bond was immediately given, and a citation was signed and issued by said Chief Justice on the 28th of January, 1869, and a writ of error was thereupon issued by the clerk of the Supreme Court of the United States, attested as of the first day of the term of said court, commencing in December, 1868, in conformity to the provisions of the acts of Congress in such case made and provided; and this writ of error and the said citation were both served on the said defendants therein named (being the defendants in the cause and the appellees in said court of appeals) within ten days after the date of said decree in said court of appeals, thus rendering said writ of error effectual to operate as a supersedeas to the said decree, under the act of Congress in such case made and provided. Complainant herewith exhibits to your honor certified copies of said petition for said writ of error; the order of Chief Justice Chase allowing the same; the bond given by the petitioner, being the bond of J. W. Garrett and J. H. B. Latrobe, executed for and on its behalf; the citation thereupon awarded; and
16 the writ of error issued by the clerk of the Supreme Court, with the proof of the service of each, severally annexed, together with an official certificate of the clerk of the Supreme Court of the United States, under the seal of said court, that the said papers and a transcript of the record of said cause had been filed in the Supreme Court of the United States on the 22d of May, 1869, and that the same was then pending in said Supreme Court; all of which this complainant prays may be taken and received as part hereof.

And this complainant further sheweth unto your honor that, in consequence of the doubts existing as to the liability of this complainant to taxation, whether general or local, under the laws in force in this State, and the controversy existing as to such liability, and as to the nature and amount of the taxes with which it was chargeable, if liable to any taxation whatever, the legislature of West Virginia, by joint resolution of both houses (a copy of which is herewith exhibited), adopted on the 4th of March, 1869, provided that the board of public works, consisting of the governor, auditor, and treasurer of the State, should be constituted a board or committee with full power to adjust, compromise, and settle on fair, equitable, and liberal terms, all State and school taxes assessed against this complainant and the Parkersburg Branch up to December 31, 1868, and that upon payment into the State treasury of the amount agreed between said board and said company, the said company, being this complainant, should be discharged from all liability for the same. By the second section of said resolution it was provided that the board of supervisors of each county through which the Baltimore and Ohio railroad and Parkersburg branch run, should be authorized and empowered to compromise on fair and liberal terms all taxes assessed against said company by any of the said counties and townships. Under this resolution this complainant has promptly and cheerfully designated an agent, with authority to negotiate with said board of public works for the compromise and adjustment of said supposed arrearages of State and school taxes claimed to be due up to December 31, 1868, and with the boards of supervisors of the counties through which its road passes, for compromise and adjustment of supposed arrearages of taxes claimed to be due to said counties and townships, on the fair and liberal terms contemplated by said joint resolution. This appointment has been notified to

the parties concerned, and preliminaries have been arranged, but time has not yet been afforded to progress with the necessary negotiations. And this complainant submits that a reasonable time was plainly intended to be allowed by the legislature, within which such com-
17 promise and adjustment might be made, and that, as a joint resolution, should be construed as staying the collection of all taxes and levies during such period.

By reason of which said several promises this complainant had well hoped that it would have been permitted to enjoy its franchise and privileges aforesaid without let or molestation on the part of the officers of the officials of West Virginia, and without any attempt on the part of them to enforce payment of taxes of any kind from this complainant until the taxing power yielded to the State by its acceptance of the said act of 1847 could lawfully be exercised against it, or until it should be so declared by competent authority, and until the final decision of said case in the Supreme Court of United States, and until it was found that no adjustment could be effected under said joint resolution. But in this most reasonable expectation this complainant has been disappointed. For this complainant now sheweth and charges that the defendants hereinafter named are claiming and demanding payment of the said State, school, county, and bounty taxes and levies above mentioned for the said years from 1865 to 1868, both inclusive, and this, too, notwithstanding the operation of the joint resolution aforesaid, and the pendency of the said cause above mentioned in the Supreme Court of the United States, in which various questions are presented (common to that case and to this), upon which the right to impose such taxes and levies for the year 1864, or for any year or years since, essentially depends. And the said supervisors and the present and late sheriffs of said county have announced their purpose to be, to levy upon and sell sufficient property held in the name of this complainant to satisfy said taxes and levies; and this complainant has reason to apprehend, and does apprehend, that this purpose will be carried into execution, notwithstanding this complainant's just and well-founded claim to exemption from any such taxation, and from all proceedings to enforce it, unless said parties shall be restrained from so doing by the intervention of your honor. And the several townships in said county through which this complainant's road passes (the names of which are not known to this complainant) are, as complainant has been given to understand, also claiming certain levies (the amounts of which are to [to] this claimant unknown) for some or all of the same years above specified, and insisting that they have right to enforce the collection thereof from this complainant by similar distraint and sale of property as aforesaid.

All of which actings and doings of said parties and their confederates are in violation of the vested rights of this complainant under the several laws and contracts aforesaid, in direct contravention of
18 the Constitution of the United States, contrary to equity and good conscience, fraudulent as it respects this complainant, and tend manifestly to its injury and oppression.

In tender consideration whereof, and forasmuch as this complainant is remediless in the premises by the strict rules of the common law, and only and properly relievable in a court of equity, where matters of this sort are properly cognizable and relievable:

To the end, therefore, that the board of supervisors of the county of Marshall, Henry Keltz, sheriff of said county, and Jackson Reed, late sheriff of said county, the said townships of said county, through which complainant's road passes, when their names shall be ascertained (the said board of supervisors and said townships being municipal corporate

bodies, created by the constitution and laws of West Virginia, with authority to sue and be sued in those names, respectively), may be made defendants to this bill, and may answer the allegations thereof, fully and particularly, in due form according to law; that the said defendants, their servants, and agents, and the deputies of said sheriff and late sheriff, may be enjoined and restrained from all proceedings to collect said State, school, county, bounty, and township taxes and levies so assessed and levied as aforesaid, for the said years from 1865 to 1868, both inclusive, by distraint or levy on property or a sale thereof, or otherwise, until the further order of the honorable the circuit court of the United States for the district of West Virginia; that by a decree of said court, the true construction and effect of said laws and contracts with respect to the taxation or exemption therefrom of this complainant's stock, property, and profits may be settled and declared, that this complainant may be quieted and protected in its rightful exemption from taxes and burthens in the State of West Virginia, as hereinbefore claimed and explained; and that this complainant may have such other, further, and general relief in the premises, as the nature and circumstances of this case may require, and to your honor shall seem meet and equitable, may it please your honor to grant unto this complainant the United States most gracious writ of subpœna, to the said defendants directed, and commanding them to appear and answer, &c.

BALTIMORE & OHIO RAILROAD COMPANY,
By Counsel.

LEE, *Compl't's Solicitor.*

19 STATE OF MARYLAND, *City of Baltimore, to wit:*

John King, jr., vice-president of the Baltimore & Ohio Railroad Company, the plaintiff named in the foregoing bill, being duly sworn, says that the facts and allegations therein contained, so far as they are stated of his own knowledge, are true, and that so far as stated upon information, he believes them to be true.

JOHN KING, JR., *V. P. Baltimore & Ohio R. R. Co.*

Taken, sworn to, and subscribed before me this eighth day of June, 1869.

[SEAL.]

W. W. LATIMER,
A Commissioner for West Virginia,
Resident in Baltimore City, Md.

Injunction allowed as prayed for, to restrain the defendants, their servants and agents, from all further proceedings to collect, by levy upon, or distraint of, the property, or otherwise the State, county, school, and township taxes for each of years of 1865, 1866, 1867, and 1868, as set forth in the bill, until the further order of the circuit court of the United States for the district of West Virginia. But this injunction is not to take effect, unless the complainant, or some one for it, shall, within fifteen days from this date, give bond, with good security, in the penalty of sixty thousand dollars, conditioned to prosecute the said injunction with effect, or, in case the same is dissolved, to pay all taxes hereby restrained for the years aforesaid, as well as all such costs and damages as shall be awarded against the said complainant, by reason of the suing forth this injunction.

JOHN J. JACKSON, JR.,
Judge D. C. U. S. D. W. Va., and, as such,
Associate Judge C. C. U. S. D. W. Va.

To J. B. JACKSON, Esq., *Clerk of the Circuit Court of the United States for the District of West Virginia.*

JULY 10*th*, 1869.

A true copy of the bill as appears by the records of this court.

Teste:

[SEAL.] J. B. JACKSON, *Clk.*

20 And now at this day, to wit:

At a circuit court of the United States for the district of West Virginia, held at Parkersburg, on Monday, the second day of August, A. D. 1869, before the Honorable Salmon P. Chase, Chief Justice of the United States, presiding judge of said court, and the Honorable John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, associate judge of said court:

BALTIMORE AND OHIO RAILROAD COMPANY
vs.
THE BOARD OF SUPERVISORS OF MARSHALL County; Henry Keltz, sheriff of said county; and Jackson Reed, late sheriff of said county; } In equity upon injunction.

This day the defendant, the board of supervisors of Marshall County, and the defendant Jackson Reed, late sheriff of said county, tendered here in court, each, a plea in writing; which said pleas are ordered to be filed and set down for argument.

Which pleas are in the words and figures following:

21 In chancery in the circuit court of the United States for the district of West Virginia.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Marshall; Henry Keltz, sheriff of said county; and Jackson Reed, late sheriff of said county.

The plea of the board of supervisors, of the county of Marshall, one of the said defendants, to the bill of complaint of the Baltimore & Ohio Railroad Company, complainant:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint mentioned to be true in manner and form as the same is therein set forth, for plea thereto says that this court ought not to have or take further cognizance thereof; because this defendant, at the time of the commencement of this suit, was, and ever since has been, and now is, a citizen of the State of West Virginia, in this, to wit, that at the time of the commencement of this suit this defendant was, ever since has been, and now is a body politic and corporate, created, organized, existing, and having its principal place of business in the State of West Virginia, under and by virtue of the constitution and laws thereof. And

22 the complainant, at the time of the commencement of this suit was, ever since has been, and now is, a citizen of the same State of West Virginia, in this, to wit, that at the commencement of this suit the complainant was, ever since has been, and now is, a body corporate and politic, organized and existing in the State of West Virginia, under and by virtue of the constitution and laws thereof; that is to say, an act of the general assembly of Virginia, passed March 8, 1827, entitled "An act to confirm a law passed at the present session of the general assembly of Maryland, entitled 'An act to incorporate the Balti-

more and Ohio Railroad Company,'" and an act of the general assembly of Virginia, passed March 11, 1837, entitled "An act prescribing certain general regulations for the incorporation of railroad companies," and an act of the general assembly of Virginia, passed March 6, 1847, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia," which acts of the general assembly of Virginia, before the commencement of this suit, to wit, on the 20 day of June, 1863, became, and have ever since continued to be, the laws of the State of West Virginia, under and by virtue of the constitution thereof. And this defendant further says that under and by virtue of the said acts
23 of the general assembly of Virginia, and not under or by virtue of any other power or authority whatever, the railroad mentioned in said acts and in the complainant's bill, so far as the same was by said acts contemplated to be constructed and situated in the State of Virginia, was, before the commencement of this suit, to wit, on the first day of January, 1853, built and completed, and from that time until the admission of the State of West Virginia into the Union, to wit, until the 20 day of June, 1863, used and operated in the State of Virginia, under and by virtue of the said acts of the general assembly thereof, and after the admission of the State of West Virginia into the Union, and at the time of the commencement of this suit was, and ever since has been, and now is, used and operated in the State of West Virginia by the complainant, under and by virtue of the constitution and laws of the last-mentioned State, and not under or by virtue of any other power or authority whatever. All which matters and things this defendant avers to be true, and now here pleads the same to the whole of the said bill, and humbly demands the judgment of this honorable court whether this court ought to take further cognizance of this suit, and whether this defendant ought to be compelled to make any answer to the said bill of complaint, and prays to be hence dismissed, with its rea-
24 sonable costs in this behalf wrongfully sustained.

Witness the common seal of the said board of supervisors, and the signature of John G. Gorrell, president of said board.

[SEAL.] JOHN G. GORRELL, *President.*

STATE OF WEST VIRGINIA, *Marshall County, ss:*

Before me, R. C. Holliday, a notary public, within and for the said county of Marshall, this day came John G. Gorrell, president of the board of supervisors of said county, and took and subscribed the following oath:

I, John G. Gorrell, solemnly swear that the foregoing plea in chancery in not interposed for delay, and that the same is true in point of fact. So help me God.

JOHN G. GORRELL.

Given under my hand and notarial seal this 19 day of June, 1869.

R. C. HOLLIDAY, *Notary Public.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

BENJAMIN STANTON,
Counsel practicing in the Circuit Court of the United States for the District of West Virginia.

Circuit court of the United States for the district of West Virginia.

THE BALTIMORE AND OHIO RAILROAD COMPANY
vs.
THE BOARD OF SUPERVISORS OF THE COUNTY of Marshall; Henry Keltz, sheriff; and Jackson Reed, late sheriff, of said county. } In chancery.

The plea of Jackson Reed, late sheriff of the county of Marshall, in the State of West Va., one of the said defendants to the bill of complaint of the Baltimore and Ohio Railroad Company:

The said defendant, by protestation, not confessing or acknowledging any of the matters and things in said bill of complaint mentioned to be true in manner and form as the same are therein set forth, for plea says that this court ought not to have or take further cognizance thereof, because this defendant, at the time of the commencement of this suit, was, and ever since has been, and still is, a resident citizen of the State of West Virginia, and the complainant, at the time of the commencement of this suit was, ever since has been, and still is, a citizen of the same State of West Virginia, in this, to wit, that at the commencement of this suit the complainant was, ever since has been, and still is, a body cor
26 porate and politic, organized and existing in the State of West Va., under and by virtue of the constitution and laws thereof, that is to say, an act of the general assembly of Virginia, passed March 8, 1827, entitled "An act to confirm a law passed at the present session of the general assembly of Maryland, entitled 'An act to incorporate the Baltimore and Ohio Railroad Company;'" and an act of the general assembly of Virginia, passed March 11, 1837, entitled "An act prescribing certain general regulations for the incorporation of railroad companies;" and an act of the legislature of Virginia, passed March 6, 1847, entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia;" which acts of the general assembly of Virginia, before the commencement of this suit, to wit, on the 20th day of June, A. D. 1863, became, and have ever since continued to be, laws of the State of West Virginia, under and by virtue of the constitution and laws thereof.

And this defendant further says that under and by virtue of the said acts of the general assembly of Virginia, and not under or by virtue of any other power or authority whatever, the railroad mentioned in said acts, and in complainant's bill, so far as the same was by said acts
27 contemplated to be constructed in the State of Virginia, was, before the commencement of this suit, to wit, on the first day of January, A. D. 1853, built and completed, and from that time until the admission of the State of West Virginia into the Union, to wit, until the 20th day of June, 1863, used and operated in the State of Virginia under and by virtue of the said acts of the general assembly thereof. And after the admission of the said State of West [West] Virginia into the Union, and at the time of the commencement of this suit, was, and ever since has been, and now is, used and operated in the State of West Virginia, by the complainant under and by virtue of the constitution and laws of West Virginia; and not under or by virtue of any other power or authority whatever. All which matters and things this defendant avers to be true, and now here pleads the same to the whole of said bill, and humbly prays the judgment of this honorable court whether this

court ought to take any further cognizance of this suit, and whether this defendant ought to be compelled to make any other or further answer to said bill, and prays hence to be dismissed with his reasonable costs.

JACKSON REED.

28 UNITED STATES OF AMERICA,
District of West Virginia, ss:

Before me, Hannibal Forbes, a commissioner of the district court of the United States for the district of West Virginia, personally came the above-named Jackson Reed, and made oath that the foregoing plea in chancery is not interposed for delay, and that it is true in point of fact.

Given under my hand this 19 of June, 1869.

HANNIBAL FORBES, *U. S. Com'r.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

BENJAMIN STANTON,
Counsel practicing in the Circuit Court of the U. States for the District of West. Va.

29 And now upon this day, to wit:

At a circuit court of the United States for the district of West Virginia, continued and held at Parkersburg, on Friday, the 6th day of August, A. D. 1869:

BALTIMORE AND OHIO RAILROAD COMPANY
vs.
THE BOARD OF SUPERVISORS OF MARSHALL County et al. } Upon an injunction.

UNITED STATES OF AMERICA,
District of West Virginia, to wit:

At a circuit court of the United States, held at Parkersburg on the 6 day of August, 1869, for the district of West Virginia, in the ninety-fourth year of American independence:

Present, the Honorable Salmon P. Chase, Chief Justice of the United States, and the Honorable John J. Jackson, jr., judge of said district, and associate justice of this court.

State of the pleadings:

The complainants filed their bill on the 10 day of July, 1869, praying an injunction to restrain the defendants from all proceedings to collect the taxes in the bill mentioned.

30 The defendants, the supervisors of Marshall County and Jackson Reed, filed their respective pleas to the jurisdiction of this court; which pleas the complainant set down for argument.

And the same coming on to be argued at this time, it occurred as a question, whether, under the several acts of assembly of the States of Maryland and Virginia, respectively, in the said bill and pleadings referred to, and under all the circumstances stated, the said pleas were sufficient in law, and whether this court had jurisdiction of this case, on the facts presented by said pleadings.

On which said questions the opinions of the judges of this court were oposed.

Whereupon, at the request of and by the consent of the parties, by their counsel, that the points on which the disagreement hath happened, may, during this term, be stated under the direction of the judges, and

certified under the seal of the court to the Supreme Court, to be finally decided:

It is ordered that the foregoing state of the pleadings, with copies of the said bill and pleas, made under the direction of the judges, be certified according to the request of the parties and their said consent by their counsel, and the law in that case made and provided.

31 UNITED STATES OF AMERICA,
District of West Virginia:

I, Jacob B. Jackson, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify the foregoing to be a true copy from the minutes.

Given under my hand and the seal of office, at Parkersburg, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of American independence the ninety-fourth.

[SEAL.] J. B. JACKSON, *Clerk.*

(Indorsement on record:) West Virginia, C. C. U. S. No. 502. The Baltimore and Ohio Railroad Company, plaintiffs, vs. the board of supervisors of Marshall County.

Filed 7th October, 1869.

certified under the seal of the court to the Supreme Court, to be finally decided:

It is ordered that the foregoing state of the pleadings, with copies of the said bill and pleas, made under the direction of the judges, be certified according to the request of the parties and their said consent by their counsel, and the law in that case made and provided.

31 UNITED STATES OF AMERICA,
District of West Virginia:

I, Jacob B. Jackson, clerk of the circuit court of the United States for the district of West Virginia, do hereby certify the foregoing to be a true copy from the minutes.

Given under my hand and the seal of office, at Parkersburg, on the thirteenth day of September, in the year of our Lord one thousand eight hundred and sixty-nine, and of American independence the ninety-fourth.

[SEAL.] J. B. JACKSON, *Clerk.*

(Indorsement on record:) West Virginia, C. C. U. S. No. 502. The Baltimore and Ohio Railroad Company, plaintiffs, vs. the board of supervisors of Marshall County.

Filed 7th October, 1869.

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CERTIFICATE OF DIVISION IN OPINION.

BALTIMORE AND OHIO R. R. CO., COMPLAINANT,

vs.

THE SUPERVISORS OF MARSHALL, ET ALT.,
DEFENDANTS.

ON A CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

ARGUMENT FOR COMPLAINANT.

Supreme Court of the United States.

BALTIMORE AND OHIO RAILROAD COMPANY

vs.

SUPERVISORS OF MARSHALL CO., ET. AL.

ON CERTIFICATE OF DIVISION IN OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

ARGUMENT FOR COMPLAINANT.

The Baltimore and Ohio Railroad Company was incorporated by an act of the General Assembly of Maryland entitled, "An Act to incorporate the Baltimore and Ohio Railroad Company," passed on the 28th day of February, 1827. The first section of this act provides for opening books for subscription to the capital stock of the company. The second section fixes the capital stock at three millions of dollars, in shares of one hundred dollars each, and provides "that as soon as ten thousand shares of the said capital stock shall be subscribed, the subscribers of the said stock, their successors and assigns, shall be and they are hereby declared to be incorporated into a company by the name of the 'Baltimore and Ohio Railroad Company,' and by that name shall be capable in law of purchasing, holding, selling, leasing and conveying estates, real, personal

and mixed, so far as shall be necessary for the purposes hereinafter mentioned and no farther; and shall have perpetual succession, and by said corporate name may sue and be sued, and have and use a common seal, which they shall have power to alter or renew at their pleasure; and shall have, enjoy and may exercise all the powers, rights and privileges which other corporate bodies may lawfully do for the purposes mentioned in this act."

By the fourteenth section of the act, the President and Directors of the said company (for election of whom provision is made by the sixth section,) were declared to be invested with all the rights and powers necessary to the construction and repair of a railroad from the city of Baltimore to some suitable point on the Ohio river, to be by them determined, not exceeding the width prescribed, and with as many sets of tracks as they might deem necessary.

On the 8th day of March, 1827, an act was passed by the General Assembly of Virginia, entitled, "An Act to confirm a law passed at the present session of the General Assembly of Maryland, entitled, 'An Act to incorporate the Baltimore and Ohio Railroad Company.'"

This act consisted of a preamble, reciting the act of the General Assembly of Maryland in all its sections *in haec verba*, and two sections only, to wit:

"1. *Therefore be it enacted by the General Assembly*, That the same rights and privileges shall be and are hereby granted to the aforesaid company within the territory of Virginia as are granted to them within the territory of Maryland; the said company shall be subject to the same pains, penalties and obligations as are imposed by said act, and the same rights, privileges and immunities which are reserved to the State of Maryland or to the citizens thereof are hereby reserved to the State of Virginia and her citizens, except that the said company shall not make or authorize to be made any lateral road or roads within the territory of Virginia without the consent of this Legisla-

ture; that the said road shall not strike the Ohio at a point lower than the mouth of the Little Kanawha, on said river; that the words "or other property," in the seventeenth section of the above recited act shall in no case be construed to extend to any property other than materials necessary for the construction or repair of said road or other works or necessary buildings; and that in obtaining a right to any lands through which the contemplated railroad may be extended, or to any timber, gravel, stone or earth which shall be necessary to the construction or repair of said road or other works or necessary buildings within this Commonwealth, the Baltimore and Ohio Railroad Company shall proceed in the same manner as is prescribed in the seventh, eighth, ninth, tenth and twelfth sections of an act entitled, 'An act prescribing general regulations for the incorporation of turnpike companies,' passed February 7th, 1817; except, also, that any injury that may at any time be done within the limits of Virginia to the said road, other works, or necessary buildings, shall at all times be punished according to the laws which may be in force in this Commonwealth."

"2. This act shall commence from the passage thereof."

By the eighteenth section of the Maryland law, it was provided that the shares of the capital stock of said company should be deemed and considered personal estate, and should be exempt from the imposition of any tax or burthen by the States assenting to this law.

By the terms of the Virginia act, which granted the same rights and privileges within the territory of Virginia as were granted by the Maryland law within that State, this exemption from taxation was always supposed to be secured to the said company within the territory of Virginia in the same manner and to the same extent as it was granted by the Maryland act within the territory of that State. And this was plainly recognized by the Legislature of Virginia in its subsequent legislation with regard

to this company. The company having failed to complete its road within the time supposed to be limited by the Virginia law for its completion, several acts were successively passed by the Legislature of Virginia, offering to the company the privilege of completing its road through the territory of that State upon the terms therein expressed. Amongst the rest was an act entitled, "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia," passed on the 6th of March, 1847. By this act the right was granted to complete the road within the territory of Virginia, with a provision (§7,) that if the act should be accepted by the Company, the stock, property and profits of the company should be subject to general taxation, in like manner and on the same footing with other similar companies in the State; provided, however, that the said taxing power should not be exercised until and unless the net income of the company should exceed six per centum per annum upon their capital invested.

In the years 1865, 1866, 1867 and 1868, the company, believing itself exempt from taxation under the laws in force in each of those years, and therefore having failed to make the return of its property required by the laws of West Virginia providing for the method of taxing railroad companies whose property was not exempt by law from taxation, the assessors of the county of Marshall undertook, of their own motion, to assess the property of this company for taxation, as if it were not exempt therefrom under the law; the effect of which, under the law providing for the assessment and collection of revenue of the State of West Virginia was to charge the company with large sums of money in each of those years as due from it to the State for general State purposes, according to the rate of taxation prescribed by the laws of that State, and for the local municipal purposes of the county of Marshall, according to the rates of the levies laid by the supervisors

of said county in those several years upon property that was, under the law, liable to taxation, and to subject its property to be seized by the sheriff of the county and sold to raise said several amounts. The company thereupon filed its bill in the Circuit Court of the United States for the district of West Virginia, setting up its claim to exemption from taxation under its original charter from the State of Maryland and the Virginia act of the 8th of March, 1827, and denying that under the terms and conditions of the Virginia act of the 6th of March, 1847, or of any other act of that State, it had become subject to taxation either for general State purposes or local municipal purposes, and insisting that the law of West Virginia or the authority attempted to be exercised under it to collect such taxes from the complainant was in plain violation of the right to exemption from taxation secured to it under the said laws of the said State of Virginia and of the solemn compacts which they imported, and in plain contravention of the Constitution of the United States prohibiting the passage by a State of any law impairing the obligation of a contract. The bill, therefore, prayed an injunction to restrain the defendants from all proceedings to collect such taxes, State and county, by distraint of property or otherwise, that the complainant might be quieted in its rightful exemption from taxation in the State of West Virginia, and for general relief.

The injunction prayed for was allowed.

The defendants, the supervisors of Marshall county, appeared and filed a plea in abatement of the suit, alleging that they were a citizen of the State of West Virginia in this, that they were a corporation and body politic, organized and existing under the constitution and laws of the State of West Virginia, and having its principal place of business in said State; and that the complainant was a citizen of the same State, in this that it was a body politic and corporate, organized and existing in said State, under

the constitution and laws thereof; that is to say, the act of the 8th of March, 1827, the act of the 11th of March, 1837, and the act of the 6th of March, 1847. And so that as the complainant and the defendants were both citizens of the State of West Virginia, being corporations existing therein under the law thereof, the Circuit Court of the United States for said district had no jurisdiction of a suit between them.

The defendant, Reed, filed a similar plea, alleging that he was a citizen of the State of West Virginia, and that the complainant was also a citizen of the same State, in this that it was a body corporate and politic, existing in said State under the constitution and laws thereof, referring to the same three acts of the General Assembly of Virginia mentioned in the plea of his co-defendant by their titles and dates. And so that both complainant and defendant being citizens of the State of West Virginia, the Circuit Court of the United States for said State had no jurisdiction of a suit between them.

These pleas having been filed were set down for argument; and upon such argument it occurred as a question whether under the several acts of Maryland and Virginia in the bill and pleas referred to, and all the circumstances states the said pleas were sufficient in law, and also whether the Court had jurisdiction of the case.

And upon these questions, as it appears from the record, the opinions of the judges were opposed, whereupon such division of opinion was certified to the Supreme Court for its decision on the points involved.

Thus it will be seen that the questions raised by these pleadings are two:

1. Had the complainant the right as a corporation created by an act of the General Assembly of Maryland, to sue in its corporate name citizens of the State of Virginia in the United States Courts of the latter State, touching any matter of controversy at law between them?

2. If such right did attach to the complainant under its charter from the State of Maryland, has it been taken away or in any manner impaired by the several acts of the General Assembly of Virginia referred to in the pleas or either of them?

1. The right of a corporation created by one of the States to sue citizens of another State in the courts of the United States in the latter State, appears to have been the subject of much discussion and some difference of opinion heretofore among the judges of the Supreme Court. Some of the learned judges of that court persistently denied the right, insisting that a corporation was not and could not be a "citizen" of a State within the meaning of the Constitution of the United States and the act of 1789, and could not, therefore, be brought within the provisions of that act. And in an early case—*Bank of the United States vs. Deveaux*, 5 Cranch, 61—it was held by the Court that a corporation was not a citizen within the meaning of the Constitution of the United States, and could not, therefore, as such, maintain a suit in a court of the United States against a citizen of a different State from that by which it was chartered; but that if the persons who composed the corporate body were all citizens of the State creating the corporation, they might sue in the corporate name, averring the citizenship of all the members, and such a suit would be regarded as the joint suit of the individual persons united together in the corporate body, and acting in the name conferred upon them for the more convenient transaction of business, and consequently entitled to maintain a suit in the courts against a citizen of another State.

In a subsequent case—*Bank of Augusta vs. Earle*, 13 Pet., 536—the case of *Bank of the United States vs. Deveaux* was adverted to by Chief Justice Taney in delivering the opinion of the Court. He said that in that case the Court confined its decision in express terms

to a question of jurisdiction, to a right to sue, and evidently went so far with some hesitation. He added, "We fully assent to the propriety of that decision, and it has ever since been recognized as authority in this Court."

The case of *Bank of the United States vs. Deveaux*, as we have seen, made the jurisdiction of the United States Court in a suit brought by a corporation of another State against a citizen of the State in which the suit was brought, depend upon the averment that the corporators were all citizens of the State creating the corporation. Of course, then, this averment would be traversable, and, though properly made, yet upon pleading and proof, the jurisdiction might be defeated. The whole subject, however, came up again for consideration in the case of *The Louisville, Cincinnati and Charleston Railroad Company vs. Letson*, 2 How., 497. In that case the Court went a step farther, and upon full consideration held that where a corporation is created by the laws of the State, the legal presumption is that its members are citizens of the State to which it owes its legal existence; and that a suit by or against a corporation in its corporate name must be presumed to be a suit by or against citizens of the State which created the corporate body; and that no averment or evidence to the contrary is admissible for the purpose of ousting the jurisdiction of a court of the United States.

But, as said by Chief Justice Taney in *Ohio and Mississippi Railroad Company vs. Wheeler*, 1 Black, 296, the question was felt by the Supreme Court to be one of great difficulty and delicacy, and it was again argued and maturely considered in the case of *Marshall vs. The Baltimore and Ohio Railroad Company*, 16 How., 314, and the decision in the case of *The Louisville, Cincinnati and Charleston Railroad Company* reaffirmed.

And again, in the case of the *Covington Drawbridge Company vs. Shepherd, &c.*, 20 How., 227, the same question of jurisdiction was presented, and the rule laid down in the two last-mentioned cases fully maintained.

After these successive decisions, as said by Chief Justice Taney, (1 Black, 296,) the law upon this subject must be regarded as settled, and a suit by or against a corporation, in its corporate name, as a suit by or against citizens of the State which created it.

We conclude, therefore, that under the allegations of the bill in this case, this is a suit by citizens of the State of Maryland, in their corporate name of the Baltimore and Ohio Railroad Company, against citizens of the State of West Virginia, and that under the decisions that have been cited, the jurisdiction of the United States Court in the latter State is upon those allegations clear and unquestionable.

We proceed to consider the remaining question presented in this case:

2. Has the right to sue a citizen of the State of Virginia, which attached to this company under its charter from the State of Maryland, been taken away or in any manner impaired by the acts of the General Assembly of Virginia referred to in the pleas or any of them?

Those acts are:

First. The act of the 8th of March, 1827, above cited, entitled "An act to confirm a law passed at the present session of the General Assembly of Maryland, entitled 'An act to incorporate the Baltimore and Ohio Railroad Company.'"

Second. An act entitled "An act prescribing certain general regulations for the incorporation of railroad companies," passed March 11, 1837.

Third. An act entitled "An act to authorize the Baltimore and Ohio Railroad Company to construct the extension of their railroad through the territory of Virginia," passed March 6, 1847. The reference to the act of March 11, 1837, no doubt, grew out of a provision in the act of March 6, 1847, which declared (in case the act should be accepted by the company) that it should be subject to the

provisions of the act of March 11, 1837, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road or other improvements then or thereafter to be constructed within said Commonwealth, so far as the same should be properly applicable.

If the right to sue a citizen of Virginia in the United States Court held in that State accrued to the Baltimore and Ohio Railroad Company as an incident to its charter from the State of Maryland, it is not easy to perceive how that right could be taken away or impaired by any legislation whatever of the State of Virginia. The right was secured by the constitution and laws of the United States, and the legislature of any State would be powerless to defeat it. The gist of the pleas, however, is that this corporation created by the General Assembly of Maryland became and was, by virtue of the three acts of the General Assembly of Virginia referred to, or some of them, a corporation organized and existing in the State of West Virginia, and was, therefore, a citizen of said State, and so could not sue other citizens of said State in the United States Courts held therein.

If we were to concede for the sake of the argument that the effect of the three acts of Virginia referred to, or of any of them, was to create a corporation, we do not perceive how the argument for the defendants would be helped thereby. For it is clear that this corporation and that created by the Maryland act would not be the same legal entity or person. They would be two different and distinct bodies politic and corporate. They could not be welded into one. They must exist severally and distinct, the one from the other. Upon this point the case of the *Ohio and Mississippi Railroad Company vs. Wheeler*, above cited, is conclusive. That was an action brought by the railroad company in the Circuit Court for the district of Indiana against the defendant, a citizen of the State of

Indiana. The declaration alleged that the plaintiffs were a corporation created by the laws of the States of Indiana and Ohio. There was a plea to the jurisdiction, averring that the defendant was a citizen of the State of Indiana, and that the plaintiffs were a body politic and corporate, created, organized and existing in the same State by virtue of the laws thereof. To this plea there was a demurrer, and the case went to the Supreme Court of the United States on a certificate of division of opinion between the judges of the Circuit Court. Mr. Chief Justice Taney, in delivering the opinion of the Court, after referring to the cases on the subject of the jurisdiction of the United States Courts in suits by corporations which have been hereinbefore cited, proceeded:

"It follows from these decisions that this suit in the corporate name is, in contemplation of law, the suit of the individual persons who compose it, and must therefore be regarded as a suit in which citizens of Ohio and Indiana are named as plaintiffs in an action against a citizen of the last named State. Such an action cannot be maintained in a Court of the United States where jurisdiction of the case depends altogether on the citizenship of the parties; and in such a suit it can make no difference whether the plaintiffs sue in their own proper names, or by the corporate name and style by which they are described.

"The averments in the declarations would seem to imply that the plaintiffs claim to have been created a corporate body and to have been endowed with the capacities and faculties it possesses by the co-operating legislation of the two States, and to be one and the same legal being in both States.

"If this were the case it would not affect the question of jurisdiction in this suit. But such a corporation can have no legal existence upon the principles of the common law, or under the decision of this Court in the case of the *Bank of Augusta vs. Earle*, before referred to.

"It is true that a corporation by the name and style of the plaintiffs appears to have been chartered by the States of Indiana and Ohio, clothed with the same capacities and powers, and intended to accomplish the same objects, and it is spoken of in the laws of the States as one corporate body, exercising the same powers and fulfilling the same duties in both States. Yet it has no legal existence in either State except by the law of the State. And neither State could confer on it a corporate existence in the other, nor add to or diminish the powers to be there exercised. It may indeed be composed of and represent under the corporate name the same natural persons; but the legal entity or person which exists by force of law can have no existence beyond the limits of the State or sovereignty which brings it into life and endows it with its faculties and powers. The President and Directors of the Ohio and Mississippi Railroad Company are, therefore, a distinct and separate corporate body in Indiana from the corporate body of the same name in Ohio, and they cannot be joined in a suit as one and the same plaintiff, nor maintain a suit in that character against a citizen of Ohio or Indiana in a Circuit Court of the United States."

The demurrer to the plea was, therefore, directed to be overruled and the plea to be held good and sufficient to abate the action.

It is clear, therefore, that if those Virginia acts did create a corporation, it was another and different corporate body, legal entity or person from that created by the Maryland act. And the existence of such a corporation in the State of Virginia, composed of corporators who are presumed by law to be citizens of Virginia, cannot be pleaded in abatement of a suit in the Circuit Court of the United States for the district of Virginia, or that of West Virginia, against citizens thereof, by the corporators composing the Maryland corporation in their corporate name, and who are presumed to be citizens of the State of Mary-

land, the presumption as to citizenship in either case not being open, as we have seen, to denial or pleading or proof. It is impossible that such a plea could be good in a case containing the averments of this bill, unless it go on and deny that the plaintiffs were created a corporation by act of the Legislature of Maryland.

But we go further. We insist that the Baltimore and Ohio Railroad Company is exclusively a Maryland corporation; that the Virginia acts referred to did not create a corporation, but were intended to grant to the Maryland corporation the right to exercise the corporate powers granted to it by the State of Maryland within the territory of Virginia, on the terms and conditions therein expressed. And this might well be; for although a corporation can have no legal existence out of the bounds of the sovereignty by which it is created, and although it exists only in contemplation of law and by force of law, and where that law ceases to operate it can have no existence, because, as it is said, *it* must dwell in the place of its creation, yet it may exercise its corporate powers by comity or grant within other sovereignties in which it has no corporate being or legal existence.

Bank of Augusta vs. Garle, 13 Pet., 519.
Lafayette Insurance Co. vs. French, 18 How., 404.

That it is a corporation of the State of Maryland is conceded, but it is said that it is also a corporation of the State of Virginia; and, since its erection, of the State of West Virginia, and, therefore, is capable of maintaining suits against citizens of the last named State in the Courts of the United States within that State.

We concede that the laws of Virginia do, for certain purposes, and especially that of being sued and held to its just legal responsibilities in the courts of that State, place this Maryland corporation very much on the same footing

as corporations of the State of Virginia, but that these laws confer upon the complainant corporate powers and capacity, or make it a corporation of the State of Virginia in the sense that would deprive it of the capacity and privileges which it clearly possessed before they were enacted, of sueing citizens of any other State than Maryland in the Federal courts within the State of which they were citizens, we wholly deny.

It will be observed that the section of the Maryland law creating this corporation (act of February 28, 1827, §2,) incorporates, in terms, *the subscribers of the stock, their successors and assigns*, gives them their corporate capacity and perpetual succession, with capability to purchase, hold and dispose of property, to sue and be sued, to have and use, and alter or renew at pleasure a common seal, and to exercise for the purposes mentioned in the act, the powers, rights and privileges lawfully pertaining to other corporate bodies. After prescribing the manner of organizing the company, and the mode of proceeding with business, it proceeds (§§ 14 et sequentes,) to give all rights and powers necessary to construct a railroad from Baltimore to the Ohio river, including that of taking and using land, timber, gravel, stone, or other material necessary for the purpose, and of constructing lateral roads in any direction in connection with such railroad, and generally all rights and powers necessary for the construction and repair of such road. It provides the mode of condemning land and material for the road, and for crossing other roads. It gives power to put machinery on the road, and to work the same for compensation at prescribed rates; it vests the road with all works, machinery, &c., in the corporation thereby created, and declares the capital stock to be personal estate, and to be exempt from all taxation. It provides for dividends and penalties for injury to the road or its works, and after some other provisions, reserves the citizens of the State or companies thereafter incorporated

to connect with the said road. The Virginia act contains none of the features of an act of incorporation above specified. It provides for no subscriptions to capital, nor does it declare the subscribers to stock or others to be thereby made a corporation or body politic; prescribes no name, nor authorizes the use of a common seal; it does not profess to confer the capacity to purchase, hold or dispose of property, or make contracts, or to sue or be sued, or have perpetual succession, or to exercise the rights, powers and privileges lawfully pertaining to other corporate bodies. To carry out the purposes of the act there was no need to create a corporation or body politic. All this had been already and sufficiently done by the Maryland law. For the Virginia law to do this again would have been a mere work of supererrogation. It would have been, indeed, idle and useless to attempt it. For how breathe the breath of life into a being already endowed with all necessary elements of vitality and already quickened into life? Nor does the Virginia act, even in its title, give any note of such intention. Unlike that of the Maryland law, the title of the Virginia act denotes a law, not to incorporate a company, but to confirm a law of Maryland which had created a corporation, and to give to such corporation already created the same power to make and work a railroad in Virginia that it had under its charter in the State of Maryland. It recites the Maryland law by way of preamble, *in haec verba*, and then (§1,) grants, not *to the subscribers of the stock*, as does the Maryland law, but to "*the aforesaid company*," referring to the company incorporated by the Maryland law, the same powers, rights and privileges in the State of Virginia as were granted by the Maryland law within the State of Maryland, subject to the exceptions, modifications and reservations specified in the section; and this is followed by another, (§2,) of a single line, prescribing the time of the commencement of the act. Now, why construe this to be an act of incorporation in-

stead of what it was really intended to be, an act authorizing a corporation already created to exercise its corporate powers for the purpose of constructing and working that portion of its road which would be within the territory of Virginia? No particular form of words, it is said, is necessary to create a corporation, whether by the King's charter or by act of Parliament, or in Virginia or this State by act of the Legislature. True, but there must be the intention and the need to create a corporation, to mould and shape into life a being not already existing. How can this apply to a corporation already existing? It already possesses all the elements and distinctive features of a corporate being, a form and presence, a name, perpetual succession, right to hold property, capacity to sue and be sued, &c., &c. Why seek or how possible to impress all these again upon it, and this not for the purpose of giving it any new rights, capacity or functions, but for the purpose of taking from it a valuable right then possessed—that of asserting its rights within other States than Maryland in the courts of the United States in those States? The Virginia law was intended to ratify and enlarge the rights and powers of this corporation, and not to deprive it of any it already possessed. Why not give to it, then, the natural construction suggested by its form, its object and its exigencies, that of an enabling not a disabling statute, an act to confer rights, not to take them away.

But it may be said that the Supreme Courts of Appeals of Virginia and of West Virginia have passed upon this question, and that they have declared this company to be a Virginia corporation, and we may be referred to the cases of Baltimore and Ohio R. R. Co. *vs.* Gallahne's admr., 12 Gratt., 655, and Gorham *vs.* Supervisors of Ohio county, 1 W. Va. Reports, 308.

These cases, and what is said by the judges delivering opinions in them, must be considered with reference to the

matter of the cases themselves and the decisions actually made in them, and the application of what is said is to be made to the cases themselves and the decisions made according to the well-settled rule so clearly stated by Ch. J. Marshall in the case of Cohens *vs.* State of Virginia, 6 Wheaton, 264, (5 Pet. Cond. Rep., 111.) Now what the Court decided in the first of these cases was that the Baltimore and Ohio Railroad Company was liable to be sued and held to answer as a garnishee in the courts of Virginia. This was precisely the point, and this was equally true whether it was a corporation of Virginia or of Maryland. If a citizen of another State is found in Virginia, he may be sued or summoned as a garnishee, and the laws of Virginia, as do those of West Virginia, provide ample means for serving process on the Baltimore and Ohio Railroad Company. What matters it, then, to what State it owes its corporate form and being? How could it be in the slightest degree material in that case whether it was a Virginia corporation or a Maryland corporation? Its liability to be sued in Virginia under her laws was precisely the same in either case. The case presented no such question as whether the Baltimore and Ohio Railroad Company was a corporation of Maryland or Virginia or both, or was or was not entitled to sue in the courts of the United States within the State of Virginia, and no such question was considered or decided. The remark of Judge Allen, that it was to be regarded as a Virginia corporation, was the merest *obiter dictum*, and not binding as authority on this or any other court.

So with regard to the other case cited. The question was whether bonds issued by Ohio county for its subscription to stock of the Hempfield Road was binding or not. This company, although incorporated by the Legislature of Pennsylvania, was intended to construct a railroad in part through the territory of Virginia, and its charter had been recognized by the Legislature of Virginia, and pro-

vision made to authorize its operations in Virginia. What possible doubt could there be, then, of the right of a county to subscribe for constructing the road within its limits under the laws authorizing such subscriptions for purposes of internal improvement? The case was as clearly within the equity and meaning of those laws as if the company had been incorporated by an act of Virginia. Why talk about corporations of Virginia or Pennsylvania in such a case? If the question had been whether by the Virginia law the company had lost its right (previously existing) to sue in the Federal Courts of West Virginia, and the Court had said what it did say, there might in that case have been some reason for citing it as authority here; but as it is, being the mere echo of the case of *B. & O. R. R. Co. vs. Gallahne*, and of what is in truth a mere *obiter dictum* in that case, and the question being not in the slightest degree material to the case, it certainly cannot be received as authority here.

But whatever may be the consideration to which these cases may be fairly entitled, we venture to oppose to them the cases of *Marshall vs. The Baltimore and Ohio Railroad Company*, 16 Howard's U. S. Reports, and the class of cases to which it belongs and which are therein cited.

The case of *Marshall vs. The Company* decides, directly and explicitly, that this identical company is a corporation of the State of Maryland, and is liable to be sued by a citizen of Virginia in the United States Courts within the State of Maryland, and this in a case in which the question directly and necessarily arose, because if the Circuit Court of the United States for the district of Maryland had no jurisdiction, there was an end of the case. What more can be necessary for this case in this honorable Court? If a citizen of Virginia may sue this company in the United States Courts in Maryland, is it not the necessary corollary and correlative that this company may sue a citizen of Virginia or of West Virginia in the United States Courts

within his State? How discriminate! Where is there the slightest warrant for attempting any discrimination? The capacity to sue and the liability to be sued are mutual and correlative, and in this case depend on the domiciliary status of the corporators of this company, and that the Supreme Court of the United States have deliberately and solemnly decided is in the State of Maryland.

It is in vain to say that the question was waived or was not argued in the case of Marshall *vs.* this Company. It was not waived and it was argued elaborately by the judges of the Court. It had evidently been fully considered and discussed by the judges of the Court in their conference, and it was made the subject of examination in the opinions of both the majority and the minority of the Court. Will it be supposed that they had not the Virginia laws before them, or that they did not perceive their effect on the question? In point of fact, we see (what, indeed, we could not doubt) that they did advert to the Virginia laws, for they are expressly referred to in the opinions of some of the judges as furnishing facts which were parcel of the record, and are we to suppose that those able and learned judges were unable to perceive or incapable of appreciating the effect of those laws upon the question before them, if any they had? We think not, and as the Supreme Court, by a majority of six judges to three, have held that the Baltimore and Ohio Railroad Company is a corporation of the State of Maryland, and having its domiciliary status in that State, and as such is liable to be sued by a citizen of the State of Virginia in the Courts of the United States within the State of Maryland, we regard this as decisive of the question of jurisdiction in this case.

But we are told that where the Supreme Court of a State has by its decision given construction to a law of that State, its construction will be accepted by the Courts of the United States, who will conform their action to it. That this may be the rule in the cases to which it properly applies, we

certainly do not feel called upon to deny; but how is it where the supposed decision is upon a question not necessarily arising in the case, and is at best but a mere *obiter dictum?* And how is it where the Supreme Court of the United States have decided the same question directly arising before it? Which is to be the authority binding upon this Court?

But again: The rule above referred to has no application to cases in which the construction of a State law involved the constitutional validity of the law or of some other law of the same State. This exception is as well settled as the rule itself. In that case the Supreme Court of the United States will put its own construction upon the State law, without regard to the construction placed upon it by the Supreme Court of the State, and the Circuit Courts of the United States must conform their action to that of the Supreme Court that will review their decisions. If this were otherwise, it will be seen at once that in many cases depending on the constitutionality of a State law, the power and jurisdiction of the Supreme Court to review the decisions of the State tribunals would be defeated, because if that Court is bound by the decisions of the Supreme Court of a State on the construction of a statute, and the constitutionality of the statute depends upon the construction which it should receive, there is an end of the question before the case gets to the Supreme Court. We refer on this point to the case of the *Jefferson Branch Bank vs. Shelly*, 1 Black, 436; *Bridge Proprietors vs. Hoboken*, 1 Wallace, 116. See syllabus and opinion of Court at p. 144. We refer also to this case as a sufficient answer to the objection made in the court below, that the case made by the bill in our case is one of the construction of statutes and not of the constitutionality of any of them. See also *Ohio Life Insurance and Trust Company vs. Debolt*, 16 How., 432; *Mechanics and Traders' Bank vs. Debolt*, 18 How., 380.

Upon these cases as well as upon general principles, we submit that where the construction of a State law involves a question of the jurisdiction of the Courts of the United States, those Courts will not hold themselves bound by the decision of the Supreme Court itself. They must be the judges of their jurisdiction and powers; these cannot be prescribed to them by the State Courts, including those of last resort, directly or indirectly. Least of all will they be bound by a mere expression of opinion *diverso intuitu*.

We submit, therefore, that it was not the intention of the Act of March 8, 1827, to create a Virginia corporation; there was no need to create another corporation in addition to the one created by the State of Maryland, and that all that this act did and intended to do was to grant to this Maryland corporation the right to exercise its corporate power within the territory of Virginia on the terms and subject to the restrictions thereby imposed. And we think that nowhere in the subsequent legislation of Virginia with reference to this company, is it regarded or treated as a Virginia corporation; but that on the contrary, it is always recognized and treated as a corporation of another State.

Act of January 6, 1836, sess. act, p. 208.
Act of March 11, 1836, sec. 59, sess. act, p. 355.
Act of March 28, 1837, sess. act, p. 129.
Act of April 2, 1838, sess. act, p. 113.
Act of March 19, 1839, sess. act, p. 66.
Act of April 1, 1839, sess. act, p. 68.
Act of February 19, 1845, sess. act, p. 69.
Act of February 28, 1846.
Act of March 6, 1847.
Act of March 21, 1850, sess. act, p. 49.

With reference to the two other acts referred to in the pleas, the act of March 11, 1837, and the act of March 6,

1847, we submit that these acts, whether considered by themselves or in connection with the act of March 8, 1827 cannot be construed as creating a corporation or granting corporate powers to a corporation already existing under the law of Maryland. The time within which it was assumed the previous laws had required the road to be completed to the Ohio River had expired, and the road was still unfinished. The Legislature thereupon offered to the acceptance of this corporation of Maryland twelve years further time, to complete their road through the State of Virginia by a prescribed route, upon certain terms and conditions, specified and prescribed in the act. Amongst those it was provided that the company should be subject to the provisions of an act passed on the 11th of March, 1837, establishing general regulations for the incorporation of railroad companies, with respect to that portion of their road within said State, and that the stock, property and profits of the company should be subject to taxation in a certain manner, and in a certain event therein specified. The act of the 11th of March, 1837, therein referred, was a general law prescribing rules and regulations for the incorporation of railroad companies thereafter chartered by the States, for the mode of opening books and of acquiring the necessary property and right of way; also the general administration of the affairs of the company, the right to exclusive transportation and to take tolls for the same, and various other subjects connected with the construction and working of a railroad within the State. But we submit that upon the closest examination of these acts, nothing will be found to give color to the idea that they were intended to confer corporate powers or to create a new corporation. On the contrary, we submit that their whole purpose and effect was to impose new terms and conditions upon this corporation of Maryland, upon which it might continue to exercise its corporate powers and functions granted by that State, within the territory of Virginia.

We conclude, therefore, that the allegation of the pleas that the Complainant was a body corporate and politic organized, and existing in the State of West Virginia, under and by virtue of the constitution and laws thereof, and therefore a citizen of the same State, is not borne out by the acts of Assembly referred to and vouched to sustain the same: that these acts do not confer corporate powers upon any corporators whatever, nor create any corporation; or if they shall be construed to have that effect and to create a corporation, it is a corporation, the corporators of which are presumed conclusively to be citizens of Virginia, and which is another and different legal entity or person from the Complainant, the corporation created by the State of Maryland, the corporators of which are presumed conclusively to be citizens of that State, and that the existence of the former in the State of West Virginia, affords no ground for ousting the jurisdiction of the United States Courts in West Virginia, in a suit brought by the Maryland corporators in their corporate name against citizens of the State of West Virginia. Consequently that the pleas to the jurisdiction filed in this cause must be held for naught.

Respectfully submitted,

J. H. B. LATROBE,
GEO. H. LEE,
Of Counsel for Complainant.

December 2, 1870.

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IN THE

Supreme Court of the United States.

BALTIMORE & OHIO RAILROAD COMPANY,

vs.

SUPERVISORS OF MARSHALL CO., &c.

This case presents for consideration a Bill of Injunction prayed by the complainant against the defendants. In it, the complainant describes itself as a corporation of the State of Maryland, asking relief against taxes imposed by the Supervisors of Marshall county and by the State of West Virginia, and distress therefor threatened to be levied upon the property of the complainant.

In no part of the bill, does the complainant claim to be other than a Maryland corporation, chartered by her laws; though it does claim under laws passed by the Commonwealth of Virginia, to have constructed its Railroad through the latter State; and in that part of the same now known as the State of West Virginia.

The defendants are described as a corporation and citizens of West Virginia.

They have filed pleas in abatement, and claim that the complainant is a corporation of West Virginia, and that the Circuit Court of the United States for West Virginia has no jurisdiction of the case; because it is not a case between citizens of different States.

No demurrer nor answer has been filed, and the whole question of jurisdiction is raised by the pleas in abatement.

Has the Circuit Court of the United States for West Virginia jurisdiction? is the question adjourned to the Supreme Court of the United States, upon a certificate of division of opinion by the Judges of the Circuit Court of the United States for the District of West Virginia.

We insist for the plaintiff, that it has.

1. The Court upon the present state of the case will look no further than the bill. The Maryland corporation sues West Virginia defendants. It asserts its claim as a Maryland Company. It is a Maryland Company, and the plea does not deny it. It asserts no claim as a West Virginia corporation.

The plea avers, that there is a corporation called by complainant's name, which is a West Virginia corporation. Con-

cede it. The plea does not deny that there is a Maryland corporation called by same name.

The latter corporation sues. The plea in abatement cannot strike the plaintiff from the record, and insert a new one, in order thus to oust jurisdiction.

So that, whatever may be the ultimate decision on the hearing, the jurisdiction vests, because a Maryland corporation sues citizens of West Virginia, and so suing is entitled to be heard in the Federal Court.

2. But we insist, that though there be a corporation of our name in West Virginia, it is not the plaintiff, but a wholly distinct corporation. The name is common—but the corporations are distinct.

This was expressly decided in the case of this very company in the case of Marshall vs. B. & O. R. R. Co., 16 How. 314, where a citizen of Virginia sued this company as a Maryland Corporation in the Federal Court of Maryland, upon a contract relating to the construction of its road in Virginia. If a Virginia citizen may sue this corporation as a Maryland corporation, in the Federal Court of Maryland, it follows that this same Maryland corporation may sue a Virginia citizen in the Federal Courts of Virginia.

The same doctrine is maintained in O. & M. R. R. Co. vs. Wheeler, 1 Black, 286. In that case the O. & M. R. R. Co. was *eo nomine* incorporated by the States of Ohio and Indiana. The O. & M. R. R. Co., claiming to be a corporation of Ohio and of Indiana, sued a citizen of Indiana. This was a joinder of two corporations as plaintiffs, against a defendant who was a citizen of the same State with one of them. The Supreme Court denied the jurisdiction because of the joinder of one who could

sue with another who could not sue the defendant in the Federal Court. The Court clearly intimated that had the plaintiff sued alone, as an Ohio corporation, the Indiana defendant, the jurisdiction would have been sustained.

These two cases clearly sustain the jurisdiction in this case.

See also on this point:

Bank of Augusta vs. Earle, 13 Peters, 519.
Letson's case, 2 How. 497.
Rundle vs. Del. & Raritan Canal Co. 14 How. 80.
Covington Drawbridge Co. vs. Shepherd, &c., 20 How. 197.

Nor is there anything in the case cited from 51 Penn. St. R. 228, in conflict with these conclusions. This last case was relied on for defendants in the Court below.

Upon these cases we maintain that if the States of Maryland and Virginia incorporated the Baltimore and Ohio Railroad Company, they did not, and could not create the same, but did create distinct corporations—with distinct rights and capacities—that each may sue without the other, and are to be held as composed of citizens of that State granting the charter, under which they claim to stand in the suit—and that this plaintiff, as a Maryland Corporation, claiming the property threatened with levy, is entitled to injunction, irrespective of any corporate rights of the corporation of the same name chartered by the State of Virginia.

3. But we take more decisive ground.

This plaintiff is not a Virginia corporation at all, but is exclusively a Maryland corporation.

Reserving for oral discussion the presentation of our views on this point, we insist on this general proposition.

The *Corporate being* must be distinguished from its *privileges*. The one may be created by one sovereign, the latter may be granted to the alien corporation by another sovereign. A foreign corporation may by comity or grant, exercise its corporate powers, where it has no corporate being. It may be *alien* as to *being*, and *domestic* as to *privilege*.

Bank of Augusta vs. Earle, *ubi sup.*
Providence Bank vs. Billings, 4 Peters, 516, 562.
Dartmouth College case, 4 Wheat.
Slaughter vs. Commonwealth, 13 Gratt. 767.
Code of Va. 1860, pp. 225, 248.

We insist that Virginia never incorporated the B. & O. R. R. Co. Maryland gave it being and corporate power. Virginia gave it privilege to exercise its Maryland granted powers in Virginia.

We refer to all the acts of the General Assembly of Va. in respect to this company.

Act of March 8, 1827.
Act 1835-6, ch. 134.
Act 1836, ch. 235.
Act 1836-7, ch. 136.
Act 1838, ch. 159.
Act 1839, ch. 98, ch. 99.
Act Feb. 19, 1845.
Act 1845-6, ch. 115.
Act 1846-7, ch. 99, title of act.
Act March 21, 1850.
Act of Maryland 1826, ch. 123, §18.
Act of Virginia, incorporating Chesapeake and Ohio Canal Company, passed Jan. 27, 1824.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, A. D. 1869.

THE BALTIMORE & OHIO R. R. COMPANY *vs.* THE SUPERVISORS AND SHERIFF OF MARSHALL COUNTY, WEST VIRGINIA.	In Chancery; on certificate of Division of Opinion of the Judges of the Circuit Court of the United States for the District of West Virginia. On motion to dismiss for want of jurisdiction.

Argument for Defendants in support of Motion to Dismiss.

This is a bill in Chancery filed in the Circuit Court of the United States to enjoin the Supervisors and Sheriff of Marshall County, West Virginia, from collecting taxes levied on the property of the complainant for State and county purposes.

The case was set for hearing in the Circuit Court on pleas to the jurisdiction of the court.

For the purposes of this motion, it will only be necessary for the court to look into the bill far enough to ascertain the character of the parties, and the matter set up in the pleas to the jurisdiction.

It was claimed in the argument in the Circuit Court, that the questions involved in the case gave jurisdiction to the court, irrespective of the residence of the parties.

It is a sufficient answer to this to say that the Circuit Court has no original jurisdiction, except what is conferred upon it by the Constitution and the laws of Congress made in pursuance thereof.

The original jurisdiction is defined by the 11th section of the Judiciary Act of 1789, and is confined to suits at common law and in equity, where the amount in controversy exceeds $500, *and* where the United States are plaintiffs or complainants;

Where an alien is a party, and

Where the suit is between a citizen of the State where the suit is brought, and a citizen of another State.

By the act of March 3, 1833, growing out of the nullification in South Carolina, it was extended to cases where an officer of the United States was sued in a State court for acts done in the collection of the revenue.

The jurisdiction given by this Act is not strictly orginal jurisdiction.

It simply authorizes suits brought in the State Court to be certified to the Circuit Court of the United States, and therefore is rather appellate than original jurisdiction.

In 1836, original jurisdiction was given to the Circuit Courts in cases arising under the patent and copyright laws.

By the charter of the Bank of the United States, jurisdiction was given to the Circuit Court in all cases in which the Bank was a party.

During, and since the late rebellion several Acts of Congress have passed giving jurisdiction to the Circuit Courts in actions for alleged trespasses, by persons engaged in the military service.

These are all the Acts of Congress giving original jurisdiction to the Circuit Courts of the United States, under the provision of the Constitution giving jurisdiction to the Courts of the United States in cases where the Constitution or laws of the United States are drawn in question.

The general jurisdiction of the Courts of the United States in questions arising upon the Constitution and laws of the United States and treaties, &c., is provided for in the 25th section of the Judiciary Act, and is appellate and not original jurisdiction. It would be difficult, if not impracticable, to give original jurisdiction on account of the questions involved in the controversy, because the plaintiff cannot know when he commences his suit, upon what questions issue will be joined.

The defendant may admit the construction claimed by the plaintiff of the Constitution and laws of the United States, and take issue upon questions of fact, or upon the construction of State laws, which can only be tried by the State Court. No case can be found in the reported decisions of this court or of any of the Circuit Courts of the United States, where original jurisdiction has been exercised on account of the questions in controversy in the case, except in the special cases provided for by Act of Congress.

This question is so clear that we suppose no serious effort will be made to sustain the jurisdiction on this ground.

The case therefore turns upon the pleas to the jurisdiction.

The Bill alleges that the complainant is a Maryland corporation, and that the President and Directors are citizens of the State of Maryland.

The pleas allege that the complainant is a corporation created by the laws of Virginia, and that the stockholders are, some of them citizens of the State of West Virginia, and some of them citizens of the State of Maryland. The case being set for hearing on the pleas, the facts stated in them are admitted to be true. The pleas do not deny that the complainant is also incorporated by the laws of Maryland. The case therefore presents the question whether a company of persons, being citizens of several States, and having charters from several states, may sue in

their corporate name and character, in the courts of the United States for any or all of the States by which such company is incorporated.

Because if they can sue in the Circuit Court of the United States for the District of West Virginia, upon the allegation that they are a Maryland corporation, they may also sue in the Circuit Court of the United States for the District of Maryland upon the allegation that they are a West Virginia corporation.

Hence if this suit can be sustained the result is, that when a company is incorporated by several States, the State Courts are ousted of their jurisdiction in all cases where such corporation is a party, and the amount in controversy is sufficient to give jurisdiction to the Circuit Court of the United States.

The uniform course of decision in this court has been that a corporation was not a citizen, within the meaning of the constitutional provision giving jurisdiction to the courts of the United States on account of the residence of the parties.

In the early cases it was held that to give the Courts of the United States jurisdiction when a corporation was plaintiff, all the stockholders or members of the corporation must be citizens of some State other than that in which the suit is brought. Hope Ins. Co. *vs.* Boardman, 5 Cranch, 57; Bank of the United States *vs.* Devereaux, 5 Cranch 61; Commercial & R. Road Bank of Vicksburg *vs.* Slocomb, 14 Peters 60.

In the case of the Louisville Railroad Company vs. Letson, 2 Howard 497, 15 Curtis Cond., 193, it was held that the Circuit Court of the United States had jurisdiction in a case when a corporation was defendant, and some of the stockholders were citizens of a State other than that in which the suit was brought.

In the case of Marshall vs. The Baltimore and Ohio Railroad Company, 16 Howard 314, 21 Curtis Cond. 153, held that a citizen of one State may sue a corporation created by the laws of another State, in the Circuit Court of the United States for the State by which the corporation was created. In this case the question arose upon the sufficiency of the averment of citizenship in the declaration. There was no plea to the jurisdiction. Nor did it appear by the record that the Baltimore and Ohio Railroad Company had ever been incorporated by the laws of Virginia. The case, therefore, does not touch the question whether a corporation created by the concurrent legislation of two States can sue in the Circuit Court of the United States for either State.

The first case which brought before this court the question of the right of these dual corporations to sue or be sued in the courts of the United States, for either of the States by which the corporation was created, was the case of Wheeler vs. the Ohio & Mississippi Railroad Company, 1

Black, 286. In that case it was held that a suit by or against a corporation must be presumed to be a suit by or against citizens of the State which created the corporate body, and no averment or proof of the contrary is admissible to defeat the jurisdiction.

The question in this case arose on a plea to the jurisdiction, from which the plea in the case at bar is taken. The O. & M. Railroad Company sued Wheeler in the Circuit Court of the United States for the District of Indiana, alleging in its declaration that it was a corporation created by the laws of Ohio and Indiana, to which Wheeler plead to the jurisdiction, that he was a citizen of Indiana, and that the plaintiff was a corporation created by the laws of Indiana.

The decision of the court substantially was that when a corporation is created by the concurrent legislation of two States, it will be conclusively presumed that it represents citizens of both States, and therefore it cannot maintain a suit in the courts of the United States for either of the States by which it was created, against a citizen of either of said States.

In the opinion of the Court, the case is put upon the footing of two corporations composed of the same persons.

But this does not help the matter. If the Baltimore and Ohio Railroad Company holds property in West Virginia subject to taxation, it holds it by virtue of its West Virginia charter, and it is in that character only that it can sue for a cause of action arising out of its West Virginia property.

It cannot come into court as a Maryland corporation, to litigate questions arising upon its Virginia charter. Its rights and privileges in the State of West Virginia are derived from the laws of Virginia, now the laws of West Virginia; and it cannot divest itself of its character of a West Virginia corporation in litigating questions as to the character and extent of the privileges acquired under and by virtue of those laws. If it can, it can do the same thing in regard to its Maryland charter. It can assume the character of a West Virginia corporation when the privileges acquired by its Maryland charter are called in question.

We are, therefore, brought back to the question whether the Baltimore and Ohio Railroad Company is a West Virginia corporation. If it is, it is no matter whether it is a Maryland corporation or not.

As a West Virginia corporation, it is conclusively presumed to be composed of citizens of West Virginia, and therefore it cannot sue in the courts of the United States for the District of West Virginia.

In the case of Wheeler *vs.* The Ohio and Mississippi Railroad Company, 1 Black, it was not controverted or doubted that a corporation created by the laws of one State, and afterwards incorporated by the laws of another State, was a corporation of both States. The same prin-

ciple was decided in the case of The County of Allegheny *vs.* The Cleveland and Pittsburgh Railroad Company, 51 Penn'a State R. 228.

It is claimed by the complainants that the Virginia law did not create a corporation, but simply conferred certain rights and privileges upon the Baltimore and Ohio Railroad Company as a Maryland corporation.

The construction and legal effect of this law, is a question for the courts of Virginia and West Virginia.

No question is better settled than that the courts of the United States will follow the decision of the State Courts in the construction of State laws.

The 34th section of the Judiciary act of 1789 makes the laws of the States the rule of decision in the Courts of the United States, when they are not in conflict with the Constitution or laws of the United States.

In support of the proposition that the Courts of the United States will follow the State Courts in the construction of State laws, we refer to the cases of Hinde *vs.* Vattier's Lessee, 5 Peters, 398; Ross *vs.* Duval, 13 Peters, 45; Sims *vs.* Hunnelley, 6 Howard, 1; McCutchen *vs.* Marshall, 8 Peters, 220; Polk's Lessee *vs.* Wendell, 9 Cranch, 87; Elmendorff *vs.* Taylor, 10 Wheaton, 152; Bank of Hamilton *vs.* Dudley's Lessee, 2 Peters, 492; Green *vs.* Neal's Lessee, 6 Peters, 291; United States *vs.* Morrison, 4 Peters, 124; Nesmith *vs.* Sheldon, 7 Howard, 812; Commercial Bank *vs.* Buckingham, 5 Howard, 317; Leffingwell *vs.* Warren, 2 Black, 599, 603.

This is no longer a debatable question in this Court. The question then is, have the Courts of Virginia and West Virginia put a construction on this law? Do they hold that the laws of Virginia relating to the Baltimore and Ohio Railroad merely confer privileges upon it as a foreign corporation, or do they make it a Virginia corporation?

This question came before the Court of Appeals of Virginia in the case of Gallahue's Adm'r *vs.* The Baltimore and Ohio Railroad Company, 12 Grattan, 655.

In this case the Baltimore and Ohio Railroad Company was summoned as garnishee in attachment to charge money in their hands due to one Crowley, the defendant in the suit in which the attachment was issued.

The Railroad Company claimed to be exempt from the process, on the ground that it was a foreign corporation, and could not be sued in the Virginia Courts. Judge Allen, in delivering the unanimous opinion of the Court, reviewed the legislation of the State of Virginia in relation to the Baltimore and Ohio Railroad Company, and held that it was a Virginia corporation.

This decision has been regarded as settling this question in Virginia and West Virginia, and this is the first time that the Baltimore and Ohio Railroad Company have attempted to call it in question.

We know it is said that the Railroad Company was not subject to this process, whether it was a Virginia corporation or not, and that therefore this decision is now *obiter dictum*.

Whether this is true or not may be matter of controversy. But certain it is that counsel for the Railroad Company made the question, and rested the case upon it.

The court decided the question made and argued by counsel as the controling question in the case. Whether the case might have been decided upon another question which was not made and not decided, certainly the decision that was made can in no sense be regarded as an *obiter dictum*. This decision has never since been controverted by the bar or the courts of Virginia, but has been universally regarded as settling the law upon this question, and the Baltimore and Ohio Railroad Company has ever since been treated and regarded as a Virginia corporation.

The same question came before the Court of Appeals of West Virginia, in the case of Goshorn *vs.* The Board of Supervisors of Ohio County, 1 West Va. Rep. 308.

That case was a suit upon bonds issued by Ohio county to aid in the construction of the Hempfield Railroad. The Hempfield Railroad was originally incorporated by the Legislature of Pennsylvania, and by a law afterwards passed by the Legislature of Virginia, the company was authorized to extend its road from the State line through the State of Virginia to the Ohio river at Wheeling. It was held by the court that the Virginia law authorizing the extension of the road through the territory of Virginia made it a Virginia corporation. This question was decisive of the case, because the law of Virginia authorizing counties to make subscription for stock, and to issue bonds to aid in the construction of railroads, only applied to railroad companies incorporated by the State of Virginia; and, therefore, if this was not a Virginia corporation, the bonds were issued without authority of law and were null and void.

The case of the Baltimore & Ohio Railroad Company *vs.* Gallahue's Administrator is referred to and approved by the court in this case.

The case of the Baltimore & Ohio Railroad Company *vs.* The Supervisors and Sheriff of Marshall County, 3 West Va. Reports, decided by the Court of Appeals of West Virginia, January Term, 1869, reaffirmed the case in 12 Grattan and the case in 1 West Virginia, above referred to. The question decided in the case in 3 West Va. Rep. is the precise question made in this case. 3 West Va. Rep. is not yet published, but the decision of the court will be found in the printed record

of the case, now pending in this court on error to the Court of Appeals of West Virginia.

Although a writ of error has been allowed in that case on questions which it is claimed involve the construction of certain clauses of the Constitution of the United States, we apprehend that this by no means impairs the force of that decision on the construction of the State law.

And it must be borne in mind that there is no question here, upon the construction of the Constitution or laws of the United States, or of the validity of any State law as being in conflict with the Constitution or laws of the United States.

It is purely a question as to whether the laws of Virginia in relation to the Baltimore and Ohio Railroad Company make it a Virginia corporation, or whether they merely extend to it certain privileges as a Maryland corporation.

And surely this question as to the effect and operation of a State law, is a matter to be determined by the State courts.

There is no conflict of authority on the question in the State courts. They are all one way. If it were necessary, we could show from principles universally recognized, that the decision of the State courts is right. But as the question has been authoritatively settled by the court of last resort, having jurisdiction over it, we decline to go behind these decisions.

This seems to us to be the conclusive of the case on the question of jurisdiction, and that the case must be remanded to the Circuit Court, with instructions to dismiss it for want of jurisdiction.

B. STANTON.

Counsel for Respondents.